IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 755 of 2001

with

CIVIL APPLICATION NO.7822 OF 2000
in
FIRST APPEAL No 755 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

KAMALABEN W/O BUDHABHAI BHAKTABHAI PARMAR

Appearance:

1. First Appeal No. 755 of 2001
MR KL PANDYA, AGP for appellant
MS RUKHSANA M PATHAN for respondent No. 1
MR DM AHUJA for respondents Nos. 2 & 3

2.Civil Application No.7822 of 2000
MR KL PANDYA, AGP for applicant
MS RUKSHSANA M PATHAN for opponent No.1
MR DM AHUJA for opponent Nos.2 and 3

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 18/10/2001

COMMON ORAL JUDGEMENT

This First Appeal has been filed by the State Government being aggrieved by the judgment and award dated 31-1-1996 rendered by the learned Civil Judge (S.D.), Kheda at Nadiad in Special Civil Suit No.132 of 1992 whereby he has decreed the suit of the original plaintiff-present respondent No.1, Kamlaben, wife of Budhabhai Bhaktabhai Parmar.

2. It appears that when execution proceedings of the above suit have been filed by the present respondent No.1 in the court of learned Civil Judge (S.D.), Kheda at Nadiad, both the branches of the Government i.e. Legal Department of the State of Gujarat and District Panchayat, Kheda, have got up and put their machineries in motion by filing present First Appeal along with the application for condonation of delay. This Court (Coram: D.P.Buch,J) vide order dated 14-2-2001 condoned the delay of 1508 days caused in preferring the First Appeal by awarding an amount of Rs.2,000/- towards costs to the present respondent No.1-Kamlaben. Thereafter vide order dated 29-6-2001 this Court (Coram: M.H.Kadri,J.) admitted the appeal and matter was expedited. Thereafter, Civil Application NO.7822 of 2000 has come for hearing before this Court for stay of the proceedings.

3. After hearing learned counsel for the respective parties on Civil Application, specific order was passed by this Court regarding disbursement of the amount vide order dated 16-10-2001.

4. Today, I have heard learned A.G.P., Mr.K.L.Pandya for the appellant, learned counsel, Ms.Rukhsana M. Pathan and Mr.D.M.Ahuja, learned counsel for the respondents Nos.2 and 3 respectively for finally disposing of First Appeal. They have taken me through the judgment and award rendered by the learned Civil Judge (S.D.) in Regular Civil Suit No.132 of 1992 including oral as well as documentary evidence produced on record.

5. It appears that the suit was filed by the

original plaintiff in the year 1992 with a grievance that she has undergone the family planning operation on 19-11-1986 and even after said operation, she was conceived and gave birth to a baby boy on 11-6-1990 and hence, said family planning operation was a failure or not performed with due care and caution and it was a gross negligence on the part of the Medical Officer of Primary Health Centre, Kathlal, Taluka Kapadwanj, District Kheda, who was working under District Panchayat, Kheda at Nadiad and hence, she has prayed for an amount of Rs.60,000/- towards compensation contenting that pursuant to massive propaganda by the State Government, it was assured by the District Panchayat, Kheda, to the people at large that if they undergo the family planning operation, then risk and danger of giving birth to any future child will be eliminated and relying on the same, the plaintiff has undergone the family planning operation at Primary Health Centre at Village Kathlal, Taluka Kapadwanj, District Kheda on 19-11-1986 and same was performed by Medical Officer of said Primary Health Centre and since it resulted into failure, she was conceived and gave birth to a male child on 11-6-1999.

6. It also appears that present appellant and respondent Nos.2 and 3, who were party defendants in the suit, were duly served and they were appeared through advocates. The present appellant and respondent No.2 were served with summons through Bailiff on 17-8-1992 and 19-8-1992 respectively whereas respondent No.3 was served on 18-8-1992. Though served, present appellant has chosen not to appear in the proceedings whereas respondent Nos.2 and 3, though engaged Mr.C.G.Brahmbhatt as their advocate, did not file any written statement. The rojnama reflects that the advocate has tried to inform the Panchayat, but everything went in vain and they did not take any care to file their written statement or to defend their case and, therefore, ex-parte decree was passed by the Court which is under challenge.

7. It is to be noted that though ex-parte decree was passed in favour of the original plaintiff i.e. the lady victim-Kamlaben after four years of filing the suit in the Court below, Court waited for the otherside just to give them opportunity for four years and ultimately, Court has no alternative but to pass ex-parte decree and it has been decreed. Now the appellant and respondent Nos.2 and 3 say that opportunity should be given to them and matter be remanded to the Court below. At first instance this argument looks convincing but if it is seen from other angle, it is established that negligent

persons are asking opportunity in the guise of interest of justice. It is transpired from the file which has been shown to me by the learned counsel for the Kheda Zilla Panchayat that there is sheer negligence on the part of present appellant and respondent Nos.2 and 3 by remaining negligent all throughout and it seems that there is no co-ordination worth the name in Kheda Zilla Panchayat administration and because of their lacuna and mismanagement or unconcern approach towards the problem, these things have happened though it is run by well trained administrative officers and also the representative of the people. In short, due to their negligence, victims have to suffer. However, facts remain that once delay of 1508 days has been condoned, I cannot go further into the matter and matter is required to be remanded for deciding the same on merits after affording proper opportunity to the party concerned. In order to safeguard the interest of respondent No.1-original plaintiff, this Court has given direction to deposit the entire decretal amount including costs and interest in the Court and I am told by the otherside that decretal amount including costs and interest has been deposited in the Trial Court and thereafter, this Court vide order dated 9-10-2001 directed for disbursement of the said amount thereby 50 per cent of the amount was ordered to be given to the original plaintiff forthwith and rest of the 50 per cent amount was ordered to be invested in any nationalised bank by way of Fixed Deposit. Similarly, learned counsel for the respective parties have given assurance on behalf of their respective clients i.e. present appellant and respondent Nos.2 and 3 that they will give full co-operation to the Trial Court and will not seek any adjournment on flimsy grounds. They have also given assurance that they will file their written statement within one month from today and thereafter, proceed with the matter on day-to-day basis.

8. In view of what has been stated hereinabove, I am of the opinion that judgment and award rendered by the learned Civil Judge (S.D.), Kheda at Nadiad are required to be quashed and set aside and matter is required to be remanded to the Trial Court with a direction to dispose of the same within four months.

9. Thus, judgment and award dated 31-1-1996 rendered by the learned Civil Judge (S.D.), Kheda at Nadiad in Special Civil Suit No.132 of 1992 are hereby quashed and set aside and mater is remanded to the Trial Court for deciding the same on merits within a period of four months from the date of receipt of copy of this order

under intimation to this Court. If the present respondent No.1-original plaintiff would like to avail the facility of legal aid, same be provided to her to defend her cause. Parties are at liberty to proceed further according to their rights. First Appeal stands disposed of accordingly.

10. As matter is being remanded on the ground of negligence of the appellant and respondent Kheda Zilla Panchayat and though there is no fault on the part of present respondent No.1-original plaintiff, she has to suffer and hence, special cost is required to be awarded. Learned AGP for the appellant, Mr.Pandya has made a statement in presence of learned advocate for the Kheda Zilla Panchayat, Mr.D.M.Ahuja that previously special cost which was awarded by the Court below was deposited by Kheda Zilla Panchayat and hence, this time also, the special cost will be borne by the Kheda Zilla Panchayat. It is their interse arrangement. But the appellant is directed to deposit an amount of Rs.5,000/-in this Court towards special costs and same be paid to the original plaintiff within a period of eight weeks from today by Account Payee cheque on proper identification.

11. Office is directed to send copies of this order as well as order dated 9-10-2001 passed by this Court to the Trial Court. Parties shall also be provided with certified copies, if properly applied.

12. In view of the disposal of First Appeal No.755 of 2001 in aforesaid manner, Civil Application No.7822 of 2000 for stay does not survive and is also disposed of accordingly.

(R.P.DHOLAKIA,J.)
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